

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-221530.2

**FILE:**

**DATE:** May 23, 1986

**MATTER OF:**

Woodson Construction Co., Inc.--  
Reconsideration

**DIGEST:**

1. Allegation of collusive bidding is a matter for the Department of Justice, not GAO.
2. Challenges to an agency's affirmative determination of responsibility will not be reviewed by our Office absent a showing of bad faith or that definitive responsibility criteria in the solicitation have not been met.
3. An agency's reinstatement of a canceled solicitation is proper where justification for cancellation no longer exists and where the needs of the agency would be met by an award under the original solicitation.

Woodson Construction Co., Inc. (Woodson), requests reconsideration of our dismissal of its protest under invitation for bids (IFB) No. DE-FB96-86-PO13000 issued by the Department of Energy (DOE) for onshore and offshore pipeline construction for the Big Hill Storage facility in Texas.

We affirm the dismissal.

In its original protest, Woodson alleged that there was evidence of collusion among the bidders and that the purported low bidder, Gregory & Cook (G&C), failed to disclose the name of its joint venture partner. We dismissed the protest on the grounds that the documents filed did not state a basis for protest because allegations of collusion do not fall under our bid protest function and also because Woodson in effect was challenging any affirmative determination of responsibility which DOE might make regarding G&C. Our Office will not review an agency's responsibility determination absent a showing that the contracting officer acted in bad faith or that definitive responsibility criteria in the solicitation have not been

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met, Bid Protest Regulations, 4 C.F.R. § 21.3(f)(5) (1985); Aviation Contractor Employees, Inc.--Reconsideration, B-219999.2, Sept. 6, 1985, 85-2 CPD ¶ 276, and neither exception was alleged.

In its request for reconsideration, Woodson has provided additional details concerning its allegation of collusive bidding. However, since these allegations do not fall under our bid protest function, but are matters for the Department of Justice, we find no valid basis upon which to reconsider our earlier dismissal on this issue. Monarch Engineering Co., B-218374, June 21, 1985, 85-1 CPD ¶ 709.

In addition, we note that Woodson also raises new grounds for protest. Woodson argues that the IFB specifications for offshore construction restricted competition because only two companies were capable of performing such work and requests that the project be recompeted. However, a protester may not introduce a new argument in its reconsideration request that it could and should have made in its original protest, as our Bid Protest Regulations do not contemplate the unwarranted piecemeal development of protest issues. Spectrum Leasing Corp.--Request for Reconsideration, R-218267.2, Mar. 25, 1985, 85-1 CPD ¶ 350. Moreover, this argument concerns alleged improprieties apparent in the solicitation which must be protested prior to bid opening and Woodson should have raised this issue even before the time of its initial protest. Accordingly, this allegation is untimely and will not be considered on the merits. See 4 C.F.R. § 21.2(a)(1).

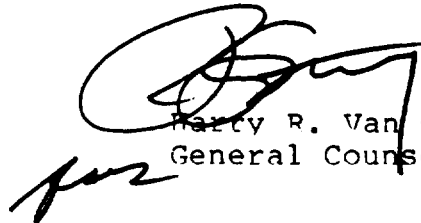
Woodson also requests that a recompetition be conducted based upon new facts which have occurred since it first filed its protest. The record shows that, due to funding difficulties, DOE canceled the IFB. Because of changed funding circumstances, DOE has decided to proceed with the project and has recently reinstated the solicitation in order to make award. Woodson contends that the agency acted improperly in reinstating a solicitation that had been canceled.

We have held that a solicitation should be reinstated where the justification for cancellation no longer exists and where award under the original solicitation would meet the actual needs of the government and would not prejudice any other bidder. Spickard Enterprises, Inc., et al., 54 Comp. Gen. 145 (1974), 74-2 CPD ¶ 121. Here, funding is no longer a problem and award under the original solicitation

would serve the actual needs of the government. In light of the prejudice to the competitive bidding system that results when a solicitation is canceled after bids are opened and prices are exposed, we find DOE's reinstatement of the solicitation proper. See Spickard Enterprises, Inc., et al., 54 Comp. Gen. 145, supra.

Finally, Woodson contends that the low bidder, G&C, is no longer a viable entity because its joint venture partner has recently sold its domestic pipeline construction division. In effect, this is a challenge to any affirmative determination of responsibility which DOE might make regarding the low bidder and, as such, absent any showing of bad faith or bidder's failure to comply with definitive responsibility criteria, will not be reviewed by our Office. Aviation Contractor Employees, Inc.--Reconsideration, B-219999.2, supra.

The dismissal is affirmed.



Harry R. Van Cleve  
General Counsel